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No. 56705-9-II

**Court of Appeals, Div. II,
of the State of Washington**

In re Marriage of:

Karmelle Marie Yerbury,

Respondent,

and

David Thomas Yerbury,

Appellant.

Brief of Appellant

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1. Introduction

David and Karmelle Yerbury¹ had a long-term marriage. During the marriage, David invested in a nightclub in Tacoma. The nightclub closed in 2017 and made its final distribution to David in June 2018. David deposited the distribution into a community property bank account and used it for community purposes until the parties separated in October 2018. The trial court assigned a value of \$103,625.95 to the business interest and awarded it to David, despite the fact that the business no longer existed.

The trial court also assigned values to the parties' community property bank accounts that were higher than the actual values at the date of separation, and awarded them to David. This placed another \$38,500 of phantom value in David's column.

¹ This brief will refer to the parties by their first names to avoid confusion. No disrespect is intended.

The trial court provided no reasons to support these untenable decisions. As a result of the trial court's errors, David was awarded assets that had an actual value of only about \$100,000 compared to Karmelle's \$366,813, meaning David actually received less than 22 percent of the marital estate. This division was neither just nor equitable. The trial court abused its discretion. This Court should reverse the distribution and remand for a new distribution to be made, with proper values and using only assets that existed at the time of trial.

2. Assignments of Error

Assignments of Error

1. The trial court erred in distributing as an asset David's past ownership interest in the Encore nightclub business, which no longer existed at the date of separation or at the time of trial.
2. The trial court abused its discretion by valuing community bank accounts higher than their values at the date of separation without providing any grounds for doing so.

Issues Pertaining to Assignments of Error

1. In a dissolution, the trial court may only divide those assets that exist at the time of trial. David's ownership interest in the nightclub business was liquidated years before separation and trial. **Did the trial court err in assigning value to and dividing an asset that did not exist at the time of trial?** (assignment of error 1)
2. The norm in Washington is to value community assets at the time of separation. The trial court deviated from that norm by valuing bank accounts at or near the time of trial without providing any equitable grounds to support its decision. **Did the trial court abuse its discretion?** (assignment of error 2)

3. Statement of the Case

3.1 After a long-term relationship and marriage, the Yerbury's marital community ended on October 3, 2018.

David and Karmelle Yerbury started dating in 1987. RP 56. They started living together in 1995 and had children together before marriage. CP 128. They married on August 6, 1999. RP 57. David is a member of the Puyallup Tribe of Indians. *See* RP 291.

Karmelle stayed home to raise the kids. RP 58. David worked as a patrol officer on the graveyard shift for the Tacoma Police Department from the end of 1993 until January 2007. RP 270-71. He then went to work at the Emerald Queen Casino, where he is now the director of security. RP 298, 417.

In 2008, David moved out of the marital home and rented a unit with his brother. RP 66-67. Karmelle testified that at that time David did not want a divorce or legal separation. RP 67. David continued to come to the house every day after work, eat family meals, and

participate in the kids' activities. RP 68-69, 279-80.

David frequently spent the night and continued to be intimate with Karmelle, though their intimacy decreased over time. RP 68, 121, 207, 278. David continued to support Karmelle financially. RP 119-20, 414.

David filed a Petition for Dissolution of Marriage in Puyallup Tribal Court in August 2018 and served Karmelle with the petition on October 3, 2018. CP 182. The tribal court dismissed the petition for lack of personal jurisdiction over Karmelle. CP 182. Karmelle then filed her own petition in Pierce County Superior Court. CP 1. David appealed the tribal court dismissal, believing that the tribal court process would be more efficient, and afraid of why Karmelle might want it in state court instead. CP 182; RP 307-08. David's efforts to keep the case in tribal court ultimately failed, and the case proceeded in state court. *See* RP 336-37. The trial court found the parties' date of separation to be

October 3, 2018, the date Karmelle was served with the tribal court dissolution petition. CP 128; RP (Ruling) 6.

3.2 In 2010, David invested in a Tacoma nightclub, which closed in 2017 and made final distributions prior to the parties' date of separation.

In 2008 or 2009, David cashed out his police retirement for about \$188,000. RP 272. In 2010, he was approached by a friend to invest in a nightclub business in Tacoma. RP 81-83. David purchased a 25 percent stake in the nightclub company, Encore Development Group, LLC, for \$100,000. RP 76-77. The remainder of the retirement funds were left in the parties' primary joint savings account, where they were depleted within a few years. RP 287.

Encore was generally profitable from 2010 to 2017. RP 79. David received distributions of profits from 2010 to 2017 while the nightclub was operating. RP 288-89. In 2017, the building that housed the nightclub was sold to a new owner who did not renew

the nightclub's lease, forcing the nightclub to close. RP 79. This was a disaster for Encore, which was unable to recover between \$200,000 and \$325,000 worth of fixtures and other physical assets that were tied to the building and could not be recovered, reused, or sold. RP 86-88. This represented a significant loss on the partners' original investments. *See* RP 88-89; Ex. 76, p7-8, 176, 181.

Prior to making final distributions to the partners, the company's final balance sheet showed a final cash balance of \$138,139.82. RP 96; Ex. 76, p17. It showed David's equity as \$103,625.95 minus \$21,250 in draws. RP 77-78; Ex. 76, p17; *cf.* Ex. 76, p218 (showing David's capital account at \$86,568). After paying its debts and recovering what assets it could, Encore distributed its final bank account balance to the partners according to the operating agreement, which entitled David to a 25 percent share. RP 88-89, 103. According to the company's tax records, David received

a final distribution of \$35,420. RP 89; Ex. 76, p206. The managing partner of the business testified that there may have been some small additional cash distributions that could have pushed David's total as high as \$40,000. RP 107-08; *see* RP 289.

Encore's tax records for 2017 showed a change in the ownership shares of the partners, with David's share increased to 43.76 percent. RP 91; Ex. 76, p176, 216. The managing partner explained that this was an accounting practice to allocate the loss among the partners for tax purposes in the most efficient manner. RP 91-92. David's actual ownership share or entitlement to profits did not change. RP 92. David received his 25 percent share of the final distribution as provided in Encore's operating agreement. RP 103. David's final distribution of \$35,420 represented a loss of \$45,603 in his equity in Encore and a business loss of \$53,606 in tax year 2017. Ex. 76, p176.

When asked where he deposited the distribution, David remembered putting the money into a Key Bank account that he opened for that purpose. RP 289. He later remembered putting it into an account that he had opened the same day that he opened an account for his daughter's tribal money after she turned 18. RP 355-56. He remembered then having to spend "the majority of it" to rescue the parties' home from foreclosure. RP 289. When asked about specific bank statements, David struggled to identify where the Encore deposit was made, eventually agreeing that an opening deposit of \$46,410.59 in June 2018 into a Key Bank money market savings account ending in 7032 was the Encore distribution. RP 363-64; Ex. 72, p1.

The bank account records show the connection between the Encore distribution and the payment to stave off foreclosure. Shortly after making the Encore deposit, on June 19, 2018, David obtained a cashier's check for \$10,000 from the parties' primary checking

account, Tapco x6500. Ex. 25, p35. He then went back to Key Bank on June 20, 2018, and withdrew \$15,000 of the Encore money. Ex. 72, p1. He deposited the combined \$25,000 into another existing account, ending in 0961, to fund a wire transfer of \$24,763.89, which David testified was the payment to the mortgage company to get the house out of foreclosure. RP 351; Ex. 73, p78.²

As of the date of separation (Oct. 3, 2018), the balance of Key Bank x7032 was \$31,499.19 (*see* Ex. 72, p5-6); Key Bank x0961 was \$548.10 (Ex. 73, p82); and Tapco x6500 was \$8,392.37 (Ex. 25, p.67).

² The opening statement of Key Bank x0961 is consistent with David's memory of opening the account the same day as his daughter's account, leaving only some \$500 in his own account. RP 355; Ex. 73, p1.

3.3 The trial court placed a value of over \$100,000 on David's defunct interest in the nightclub and awarded it to David. The trial court valued the bank accounts higher than their value at separation. The trial court did not explain these decisions.

David failed on multiple occasions to provide complete discovery responses, leading to four motions to compel. *See* CP 192-95, 243-45, 264-65 (first motion, relating to requests for production); 266-70, 376-80, 389-91 (second motion, relating to requests for production); 397-99 (third motion, relating to inspection of David's vehicles); 407-10, 458-59 (fourth motion, relating to the vehicles and discovery of undisclosed stocks). At trial, David testified about his responses to interrogatories and requests for production. RP 408-10. He testified that he did not produce the vehicle for inspection because it was in the custody of the mechanic, to whom David owed money roughly equal to the value of the car. RP 311, 392-93, 407-08. He testified that prior to Karmelle's discovery

of the stocks, he had believed that the Boeing stock was lost and didn't realize he owned any Microsoft stock. RP 411-12. The trial court found that David was not "intransigent in the sense of being intentionally ... ornery," but that he did increase litigation costs through his "lack of diligence" and "inattention to detail" in responding to discovery. RP (Ruling) 12-13; CP 130. The trial court awarded Karmelle \$30,000 in attorney's fees as a combination of intransigence and need and ability to pay. RP (Ruling) 12-13; CP 130.

The trial court accepted written closing arguments from the parties. Karmelle proposed that the Tapco account should be valued at the date of separation and that Key Bank x0961 "contained \$17,461.40" and Key Bank x7032 "contained \$46,410.59." CP 69. These numbers represent the highest values these accounts ever reached. Ex. 72, 73. She did not explain why she felt those numbers were appropriate rather than the value at separation.

Karmelle argued that David's interest in Encore was community property and should be valued at \$103,625.95, the company's book value of David's equity. CP 69. She proposed an unequal division of community property, 60/40 in her favor, in which she received the marital home and David received the defunct Encore interest, the unclaimed Microsoft stock, and the inflated bank account values. CP 76.

David argued that Encore should not be part of the property distribution because the evidence showed that Encore was liquidated and the proceeds were deposited into community bank accounts and used for community purposes. CP 81. The asset no longer existed by the time of separation. CP 97. David argued that the \$17,461.40 value for Key Bank x0961 was inappropriate because at least \$16,906.65 of that, withdrawn the same day it was deposited, was their adult daughter's money. CP 93. He argued that all three bank accounts should be valued at the date of

separation found by the trial court. CP 98. He requested the marital home be sold and the proceeds divided. CP 81.

The trial court largely adopted Karmelle's proposal. The trial court ruled that a 60/40 split of community property in favor of Karmelle was fair and equitable. RP (Ruling) 10. The trial court awarded Karmelle the marital home. RP (Ruling) 8. The trial court awarded David the Encore interest, valued at \$103,625.95, stating only, "That was supported by the record." RP (Ruling) 8; CP 132. The trial court awarded David the bank accounts, valued at their high-water-mark values as Karmelle requested, stating only, "I don't have a problem with those." RP (Ruling) 8; CP 132.

4. Argument

David seeks reversal of the property division on two grounds. First, the trial court erred in including Encore in the property division because the interest in Encore no longer existed by the time of separation. Any remaining value from the Encore final distribution was present in the bank accounts. The trial court cannot divide an asset that no longer exists.

Second, the trial court abused its discretion when it valued the bank accounts at their respective high-water-marks rather than their value at separation. The trial court provided no reasoning for departing from the long-accepted default rule.

4.1 This Court reviews property distribution decisions for abuse of discretion.

This Court reviews a trial court's distribution of property in a dissolution of marriage for abuse of discretion. *In re Marriage of Muhammad*, 153 Wn.2d 795, 803, 108 P.3d 779 (2005). "A trial court abuses its

discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons.” *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997). “A court’s decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.” *Id.* at 47.

4.2 The trial court erred in including a non-existent asset in the property distribution.

“At the time of dissolution, all property is brought before the court for a ‘just and equitable’ distribution.” *In re Marriage of Farmer*, 172 Wn.2d 616, 625, 259 P.3d 256 (2011). A trial court has broad discretion to distribute the property in a manner that is just and equitable after considering all relevant factors.

Muhammad, 153 Wn.2d at 803. Those factors include (1) the nature and extent of the community property, (2) the nature and extent of the separate property, (3) the duration of the marriage, and (4) the economic circumstances of each spouse at the time the property distribution is to become effective. **RCW 26.09.080**.

But before a trial court can distribute an asset, that asset must be properly before the court for distribution. “It is well settled that, ‘when exercising [its] broad discretion, a trial court focuses on the assets then before it—i.e., on the parties’ assets at the time of trial. *If one or both parties disposed of an asset before trial, the court simply has no ability to distribute that asset at trial.*” *In re Marriage of Kaseburg*, 126 Wn. App. 546, 556, 108 P.3d 1278 (2005) (emphasis added) (quoting *In re Marriage of White*, 105 Wn. App. 545, 549, 20 P.3d 481 (2001)).

In *Kaseburg*, the marital home was lost to foreclosure prior to trial. *Kaseburg*, 126 Wn. App. at

550-51. The parties failed to contest the foreclosure, and the sale was complete 10 days before the dissolution trial started. *Id.* The trial court awarded the wife a \$150,000 judgment, representing the trial court's valuation of her share of the net community interest in the home. *Id.* at 555. This Court reversed the award, holding that the trial court "manifestly abused its discretion" by awarding an interest in property "that did not belong to the community at the time of trial." *Id.* at 559. The home was not properly before the trial court for distribution. *Id.* at 561.

Similarly, in *White*, the trial court abused its discretion by awarding an interest in property that was not before the court for distribution. The wife had received a separate property inheritance during the marriage. *White*, 105 Wn. App. at 547. She used \$4,000 of the inheritance to pay the debt on the family car and \$26,511 of it to pay the debt on the family home. *Id.* The trial court reasoned that the \$30,511 was the wife's

separate property when she inherited it, that the husband had failed to prove that it became community property when used to pay the debts, and therefore the \$30,511 was still her separate property at the time of trial. *Id.* at 548. This Court rejected the trial court’s reasoning and remanded for reconsideration of the property division. *Id.* at 554-55. This Court held that the assets before the trial court for distribution were the family home and car, not the inheritance, which had already been spent. *Id.* at 551.

David’s research has not discovered any published opinion that contradicts or calls into question this “well-settled” principle that a trial court can only distribute those assets that exist at the time of trial. To the contrary, this principle continues to be followed in numerous unpublished opinions—demonstrating how “well-settled” the principle is. For example, in the unpublished portion of *In re Marriage of Underwood*, 181 Wn. App. 608, 326 P.3d 793 (2014)

(cited under GR 14.1), this Court reversed a trial court decision that awarded the wife a \$112,000 lien against the husband's property "based on the projected value of the parties' failed real estate transaction," a non-existent asset that was not before the court.

Underwood, at ¶ 91.

Here, as in *Kaseburg*, *White*, and *Underwood*, the trial court erroneously included a nonexistent asset in the property distribution—namely, David's defunct interest in Encore Development Group, LLC. The trial court did not explain why it included Encore, stating only, "That was supported by the record." RP (Ruling) 8. But it was not supported by the record.

There was no evidence presented at trial that David's partial ownership interest in Encore still existed by the time of separation, let alone by the time of trial. Rather, all of the evidence shows that Encore's business activities terminated in 2017, that it dissolved, wound down, and made final distributions to

its owners by June 2018. David received a final distribution of \$35,000-\$46,000, which he deposited into a community property bank account and used for community purposes until the date of separation. There was no evidence that David retained any ownership interest in the defunct business after receiving his final distribution. There was certainly no evidence that David could ever hope to recover \$103,625.95 in equity out of Encore's empty shell. There was no evidence that Encore even continued to exist as an entity after June 2018.

The only reasonable conclusion from the evidence was that David's ownership interest in Encore ended with his receipt of the final distribution in June 2018. That \$46,000 final distribution represented the final sum total of equity that David could recover out of his original investment. At the time of separation and at the time of trial, there was nothing left. The ownership

interest in Encore no longer existed and was not before the trial court for distribution.

The trial court manifestly abused its discretion when it included Encore, a non-existent asset, in the property distribution. Under the trial court's erroneous decision, David's side of the ledger included \$103,625.95 that simply did not exist, resulting in a wildly inequitable distribution. This Court should reverse the property distribution and remand for the trial court to reconsider the distribution using only assets that existed at the time of trial.

4.3 The trial court abused its discretion in deviating from value at separation without providing any reasoning for doing so.

The trial court further abused its discretion when it valued the parties' community property bank accounts at their high-water-mark values instead of their values at separation, without providing any reasoning for doing so. For decades in Washington, the

default valuation date for marital assets in a dissolution has been the date of separation. *Lucker v. Lucker*, 71 Wn.2d 165, 167-68, 426 P.2d 981 (1967). Although trial courts enjoy broad discretion to pick a valuation date that is equitable, *Koher v. Morgan*, 93 Wn. App. 398, 404, 968 P.2d 920 (1998), “If the property is to be valued as of the date of trial rather than the date of separation, appreciation as well as depreciation in value should be considered in making an equitable division,” *Lucker*, 71 Wn.2d at 168.

“When the postseparation increase or decrease in the value of a community asset is primarily due to market factors, the spouses should share in any gain or loss,” favoring valuation at the time of trial. Elizabeth A. Turner, 20 Wash. Prac., Fam. And Community Prop. L. § 32:7. “When the increase or decrease in the value of a community asset is due, at least in part, to the efforts of one spouse, the extent to which the other spouse should enjoy the increase in value, or suffer the

decrease in value, is a question of fairness under the circumstances,” and might favor a valuation at the date of separation, the date of trial, or some date in between, depending on the particular circumstances. *Id.*; see *In re Marriage of Shepard*, 21 Wn. App. 2d 1049, 2022 WL 1016677, *5 (Apr. 5, 2021) (unpublished, cited under GR 14.1) (“Given the evidence presented, the trial court had discretion to pick the date of valuation as the date of separation, the date of trial, or some date in between.”) (citing *Lucker*, 71 Wn.2d at 167).

Under *Lucker*, a trial court must have equitable reasons for choosing a valuation date other than the default date of separation. See *Lucker*, 71 Wn.2d at 167-68. If the trial court’s reasons are untenable, it is an abuse of discretion and should be reversed.

Littlefield, 133 Wn.2d at 46-47.

Here, the trial court valued the community property bank accounts at dates other than the date of

separation or of trial but failed to provide any reasons for doing so. Because the trial court failed to provide any tenable reasons for its valuations of these accounts at dates other than the date of separation, its decision was an abuse of discretion.

As of the date of separation (Oct. 3, 2018), the balance of Key Bank x7032 was \$31,499.19 (*see* Ex. 72, p5-6); Key Bank x0961 was \$548.10 (Ex. 73, p82); and Tapco x6500 was \$8,392.37 (Ex. 25, p.67).

It appears that the trial court's adoption of the high-water-mark values was merely the result of placing too much trust in Karmelle's presentation of the amounts in closing argument. Karmelle proposed that the Tapco account should be valued at the date of separation, but she set that value at \$14,787.05. CP 69. She further stated that Key Bank x0961 "contained \$17,461.40" and Key Bank x7032 "contained \$46,410.59." CP 69. But none of these accounts actually contained those amounts at the date of separation or

the date of trial. *See* Exs. 25, 72, 73. The sum total of the trial court's reasoning in adopting Karmelle's numbers was, "I don't have a problem with those." RP (Ruling) 8. The trial court did not provide any reasoning for deviating from the separation date values.

4.3.1 Tapco account ending in 6500

In Karmelle's closing arguments, she had proposed a separation date of April 16, 2019, the date she filed the state court action. CP 65. Because the trial court found the actual date of separation to be October 3, 2018, Karmelle's proposed value for the Tapco account was incorrect. According to her own reasonable proposal that the account should be valued at the date of separation, that value on October 3, 2018, was \$8,392.37 (Ex. 25, p.67). The trial court provided no reasons for deviating from this value. Because there were no tenable reasons for the trial

court's valuation, the trial court abused its discretion and this valuation should be reversed.

4.3.2 Key Bank account ending in 0961

Karmelle's statements that the Key Bank accounts "contained" \$17,461.40 and \$46,410.59 were also incorrect. In reality, Key Bank x0961 only "contained \$17,461.40" for probably a matter of minutes after it was opened on April 8, 2015, long before the date of separation. The same day the account was opened with a \$17,461.40 deposit, \$16,906.65 was immediately withdrawn and placed in the account of the parties' adult daughter, leaving a balance at the end of that day of only \$554.75. RP 355-56; Ex. 73, p1. There was no evidence presented at trial that the \$16,906.65 was anything other than David said it was: their adult daughter's tribal money received when she turned 18.

For the next two years, the account's balance hovered between about \$100 and \$1,500 before

becoming largely inactive at a balance of \$111.99. Ex. 73, p1-62. During this period, the account was used for ordinary community living expenses including gas and meals. *See* Ex. 73, p1-62. The only other significant activity in the account was the June 2018 deposit of \$25,000 to cover the wire transfer to the mortgage company to save the house from foreclosure. RP 351; Ex. 73, p78. Those funds came from the Encore distribution and the Tapco account. Ex. 25, p35; Ex. 72, p1. The balance Key Bank x0961 at the date of separation was \$548.10, similar to the balance on the day the account was opened. Ex. 73, p82. That value remained until the last statement in the exhibit, dated October 7, 2020. Ex. 73, p108.

Given this evidence, there are no tenable grounds or reasons for setting a value of \$17,461.40 for Key Bank x0961. Because there were no tenable reasons for the trial court's valuation, the trial court abused its discretion and this valuation should be reversed.

4.3.3 Key Bank account ending in 7032

Similarly, Key Bank x7032 only “contained \$46,410.59” for about 15 days in June 2018. The account was opened to hold the Encore distribution, which was initially deposited on June 6, 2018, in the amount of \$46,410.59. RP 363-64; Ex. 72, p1. On June 20, 2018, David withdrew \$15,000 toward the payment to the mortgage company to save the house from foreclosure. RP 351; Ex. 72, p1. This was the only withdrawal until after the date of separation. Ex. 72, p1-6 (next withdrawal was Nov. 14, 2018). The balance on the date of separation was \$31,499.19. *See* Ex. 72, p5-6 (September 6 balance of \$31,485.73, plus interest paid October 3 of \$31.46, minus service charge on October 3 of \$18.00). After separation, David would gradually deplete this account to a balance on September 3, 2020, of \$1,635.25. Ex. 72, p43.

It is certainly equitable to charge David with his post-separation use of the funds in this account by

valuing the account at the date of separation. But it is not equitable to also charge him with the \$15,000 that he withdrew on June 20, 2018 to rescue the marital home from foreclosure—especially when that expense preserved the home as an asset that was ultimately awarded to Karmelle. Because she benefits from the preservation of the home, it is only equitable that she share in the expense that preserved it.

Given the evidence, there are no tenable grounds or reasons to support the trial court's valuation of Key Bank x7032 at the pre-separation value of \$46,410.59. Because there were no tenable reasons for the trial court's valuation, the trial court abused its discretion and this valuation should be reversed.

It is possible that Karmelle may argue that David's failure to disclose the Key Bank accounts during discovery is sufficient reason to adopt the high-water-mark values, but the trial court did not find that David deliberately concealed the accounts. In fact, the

trial court specifically found that David was not attempting to obstruct Karmelle but that he was simply not diligent or attentive to detail. RP (Ruling) 12-13. This finding does not justify adopting the higher valuations, particularly where the higher value of x0961 was all property of the parties' adult daughter and the higher value of x7032 was money that preserved the marital home from being lost entirely. There are no tenable reasons for the higher valuations.

Because the trial court's distribution awarded all of the improperly inflated accounts to David, the result was another phantom asset in his column, totaling roughly \$38,500 that did not exist at the date of separation. As a result of the trial court's errors, David was awarded assets that had an actual value of only about \$100,000 compared to Karmelle's \$366,813, meaning David actually received less than 22 percent of the marital estate. This division was neither just nor equitable. The trial court abused its discretion. This

Court should reverse the distribution and remand for a new distribution to be made, with proper values and using only assets that existed at the time of trial.

5. Conclusion

The trial court abused its discretion in awarding David a business interest that did not exist and bank accounts with improperly inflated values. The trial court provided no reasons for these decisions, and there are no tenable reasons for them. The trial court's distribution of property was neither just nor equitable. This Court should reverse and remand for a new distribution to be made.

I certify that this document contains 4,937 words.

Submitted this 19th day of August, 2022.

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Certificate of Service

I certify, under penalty of perjury under the laws of the State of Washington, that on August 19, 2022, I caused the foregoing document to be filed with the Court and served on counsel listed below by way of the Washington State Appellate Courts' Portal.

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SIGNED at Lacey, Washington, this 19th day of August, 2022.

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